

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7757 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

USHABEN WIFE OF SARDARILAL SHARMA

Versus

COMMISSIONER OF POLICE FOR THE CITY OF AHMEDABAD

Appearance:

MR ANIL S DAVE for Petitioner

MS HANSABEN PUNANI AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 26/07/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

2. The petitioner herein challenges the order of preventive detention dated 2nd September, 1998 made by the Commissioner of Police, Ahmedabad City, under the

powers conferred upon him under Sub-section 2 of Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as, 'the Act'].

3. The petitioner is alleged to be a bootlegger within the meaning of Section 2 (b) of the Act. As many as 5 offences under the Bombay Prohibition Act are registered against the petitioner and are pending investigation. In each of the cases, substantial quantity of foreign liquor was recovered from the petitioner. Besides, the police has recorded the statements of two witnesses who have given statements about the bootlegging activities of the petitioner and its adverse effect on public tranquillity and even tempo of life. The petitioner's activities are, therefore, found to be prejudicial to the maintenance of public order.

4. The only ground on which the impugned order has been assailed is : the reports of the Forensic Science Laboratory in respect of the liquor recovered in each of the above cases have not been furnished to the petitioner. Thereby the petitioner's right to make an effective representation has been infringed. Though the petition has been contested by both the respondents, the Detaining Authority as well as the State Government, by filing their respective affidavits, the above contention is not dealt with. It is argued that the Detaining Authority, while making the order of detention, had not relied upon the reports of the Forensic Science Laboratory, and therefore, the same are not supplied to the petitioner. In the matter of Ranvirsinh Kalyansinh [Spl. Civil Application No. 7490 of 1998, decided on 12th July, 1999], I have taken a view that whether the Detaining Authority relies upon it or not, the report of the Forensic Science Laboratory/Chemical Analyst is a vital document, without which the detenu may not be able to make an effective representation. It is, therefore, imperative for the Detaining Authority to furnish a copy of the said report to the detenu; except in cases where such reports are not yet received or not prepared. In the present case, it is not the case of the Detaining Authority that on the date of detention, such reports were yet not available. Besides, even after the petitioner's demand vide his representation dated 15th September, 1998, such reports are not furnished to the petitioner, neither the said representation has been answered. The petitioner's right to make an effective representation having thus been infringed, the continued detention of the petitioner is invalid and unlawful.

5. For the reasons recorded hereinabove, the petition is allowed. The impugned order dated 2nd September, 1998; Annexure-A to the petition, is quashed and set-aside. Rule is made absolute. The petitioner, unless she is required to be detained in some other case, be released forthwith. Mr. Dave, the learned advocate states that pending this petition, the petitioner has been transferred from District Jail, Surat to Central Jail, Vadodara. The Registry is, therefore, directed to send the writ of this order to the Jail Superintendent, Vadodara also.

Prakash*